

# Growing in the Community SCOTLAND LAND GUIDE



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# Introduction

Communities that access, secure, and cultivate the land for food growing can grow, eat and share healthy food with people in their local area. Through growing, they can connect, support, and build community, care for the soil and environment, and take practical action on our climate and nature emergencies. More and more people across Scotland, from rural to urban settings, are 'growing local' for sustenance, succour and sanity. Issues on food security and sovereignty, cost of living and nutrition make these endeavours a vital part of our lives, landscapes and local food systems.

We urgently need more land and support to secure access to land dedicated for community-led growing initiatives of all shapes and sizes. Current interest and demand for locally grown food continue to rise with groups looking to start and extend garden projects, new entrant growers wanting to develop market gardens, and individuals and groups joining waiting lists to take up allotment growing.

Previously known as the Landowners' Guide, The Scotland Land Guide aims to support community groups, social entrepreneurs, landowners (public or private) and other potential enablers to understand the processes and practical steps involved in establishing a community growing project on a site.

It comprises stand-alone sections to appeal to anyone with a vision of furthering access to land for growing, be they a public or private landowner, a community growing group, a planner, a developer or otherwise.

**'Community growing'** refers to local, grassroots collective growing across Scotland in a variety of settings, including community gardens, community allotments, back greens, orchards, and small community farms or market gardens, on public and private land, from less formal volunteer groups to organisations delivering essential services in local communities.

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**The accompanying Land Stories series** on [getgrowing.scotland.org](http://getgrowing.scotland.org) highlights different models of public and private land use for growing and demonstrates what is possible when community groups, land owners, and other stakeholders work in partnership to benefit our communities and climate.

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**The Community Land Advisory Service** (Scotland) offers free, impartial guidance to community groups and landowners to achieve their vision, and it can be accessed by emailing - [scotland@farmgarden.org.uk](mailto:scotland@farmgarden.org.uk)

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**For groups wanting to look at community ownership or asset transfer, links are made for the appropriate information.**



# PLACES TO GROW

In many cases, community growing projects are born from a desire to do something with vacant land in the local area, while in other cases there is no obvious land for food-growing available, and people must actively search for any potentially suitable sites. In all cases though, there are a few approaches which can be taken to try to identify potential sites, with it always being worth looking at all potential options, as the first identified site may not ultimately be the most suitable or attainable when compared to alternatives.

- [Social Farms and Gardens Scotland](#) can provide connections between people looking to start growing in the community and existing growing projects in an area, and/or landowners interested in making land available for projects of this nature, with there potentially being opportunities for new people to get involved in an existing project rather than start a new one, or to learn from an existing project's experience in terms of the availability of land for community growing use in the area.
- If looking for land, another good starting point is to find out if the local authority has prepared a Local Food Growing Strategy, or if it is in the process of preparing one, and what areas of land are identified in that as having potential for food growing use, as well who at the Council might be able to provide support to any proposed new food growing projects.
- There are many successful examples of vacant land and under-utilised open spaces being re-purposed for community growing and, to help overcome the hurdle of identifying who to contact to access such land, see '[Who Owns the Land.](#)' CLAS Scotland may also be able to provide further advice and support in this area if required.
- Another potential source of land is new open spaces which may need to be provided as part of any new developments in the area, and where new developments are proposed, it is worth contacting the Council's planning department to ask about the potential for growing space to be incorporated into this.

The nature of the land that has been identified and who owns it will then influence, for example:

What kind of arrangement might be most appropriate – i.e., whether it would be better for the site to be owned by the community, or leased, and on what terms.

The route to getting that arrangement in place – i.e., whether this can be negotiated, or whether it might be necessary to seek to exercise a community right to buy, or to make an asset transfer request.

What other regulatory requirements might need to be considered – i.e., whether planning permission might be needed before land can be used for community growing purposes.

Further details on all these matters are then provided in the relevant sections on these but, in all cases, the key first steps are set out in 'Getting Started', and this should be read in full before looking at any of the other sections in detail.



## GETTING STARTED



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# GETTING STARTED:

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## Essential steps.

### **Create a strategy.**

Identify what the long-term aspirations are for both the community and the land on which any potential community growing project might be established, and what is required for those aspirations to be realised in terms of a suitable site, project model and timescales. This also includes making sure that the community growing group is appropriately constituted for the model being pursued. Use the land advisory service and land stories to research other models taken forward by landowners and groups.

### **Assess site suitability.**

In choosing a site, carefully consider its suitability in terms of things such as accessibility and services, including water supply. These things are key to the success of a project and, whilst not the only things to establish, can be tricky and expensive to resolve if they go wrong.

### **Think about regulations and neighbours.**

Consider the proposed site and its use in relation to the regulatory framework and any neighbours. Establish communications early with any relevant regulatory bodies (such as the local planning authority, SEPA or Nature Scot) and neighbours and any other stakeholders to make sure all parties agree what is acceptable, and what may need to be restricted or managed.

### **Negotiate With Care.**

In negotiating any agreement to allow a community group to use land for growing – both at the outset, and during the life of any agreement – seek to establish mutual objectives, which work well for both parties. Where both parties feel they gain from an arrangement, this gives the best chance of a good working relationship.

### **Establish a practical framework for the use and management of any site.**

Do this through discussion with all the relevant parties and taking appropriate advice. This will ensure that it's clear what both parties expect from the arrangement, and that this is reflected in the terms of any agreement reached between you. Use the suggested Heads of Terms Framework as a starting point.

### **Take your time.**

It is better to get things right from the start, so set out clearly what you want to achieve and how best to do it. Read the appropriate guidance sections, not just this summary, and take all the appropriate advice you may need.



## Developing a site

### Site Practicalities: what you need to know

When looking at a potential site (or sites) for community growing use, it is essential to think carefully about (i) the land in question, (ii) the community's aspirations for this, and (iii) the landowners plans for it, to ensure that any arrangement that is entered into works from the perspective of all three. These can be quickly assessed using the Traffic Light Site Assessment tool below. A number of physical and practical management issues outlined below also require careful consideration:

### Suitability for growing

The starting point from a community grower's perspective should always be the site's suitability for growing in general terms: this includes orientation, exposure, soil type, water availability, and accessibility in terms of its location etc. There are numerous 'design guides' and approaches to help groups think through making a site work socially and productively. Try:

- [Community Growing Resource Pack](#)
- [Scottish Allotments and Gardens Design Guide](#)
- [Groundwork: A Market Gardeners Toolkit](#)

These can be used in conjunction with accessing [hello@getgrowingscotland.org](mailto:hello@getgrowingscotland.org) for advice and resource signposting and visiting other community growing sites through the Community Learning Exchange.

### Boundaries

To define the site you will need a plan and some physical marker to delineate the area.

A fence or hedge is not required (though can be useful), but there needs to be some way of identifying the boundaries on the ground. A boundary may be for security – growing areas may need to be protected from damage, unauthorised access and vandalism, while tools may need secure storage. This type of boundary will need to relate to the occupiers' needs and, if the site is to be locked, there should be nominated key-holders who are contactable in emergencies. Boundaries can also be part of the growing landscape, such as hedgerows for wildlife, fruit bushes and trees. When considering new boundaries, it is advisable to consult with the local authority as fencing adjacent to a road and/or over a certain height may require planning consent. See section written on Planning Matters.

### Hedgerows

In Scotland, hedgerows are not subject to any specific protections unless they are providing a habitat for nesting birds. However where landowners manage hedgerows as habitats for birds under good farming practice, they may be eligible to receive grant aid. Similarly, potential sites may also provide a habitat for other species of flora and fauna that are protected by legislation, and care needs to be taken not to harm these species (or their nesting or hunting areas).

### Access Routes

Providing and defining a safe and clear route onto the site is vital, as is making it clear who is responsible for maintenance of this. If access is difficult, or there are issues with maintenance, this may inhibit users and the site will not prosper.

### Type of Access

Depending on the site and its surroundings, you may seek access for pedestrians only, or for both cars and pedestrians, or perhaps allow vehicles for deliveries and/or special events, but not cars more generally. Many growing groups prefer restricted vehicular access, but it is wise to make arrangements for some deliveries.

### Parking

If vehicles can approach the site, then provision for parking will need to be considered (and this may affect whether planning permission is required for the site). If specific parking arrangements are not made, this may lead to casual use of less appropriate parking spots, resulting in nuisance to neighbours or ground damage.

### Water

Provision for water on site is essential. If there is a spring or burn on the site this may be used but, if not, then water from an external source or a bore hole may be required. If there is no public or private piped supply to the site, then a good rainwater harvesting system should be considered.

If water is piped to the site from a private supply, the landowner may choose to install a meter and charge a fee. [Business Stream](#) is the primary water and waste water supplier. There is a different charging regime in place for unmetered outside taps, drinking bowls or field troughs, and the reduced charge for crofts and registered smallholdings is currently inapplicable for community growing. There are however [exemptions for registered charities](#) subject to meeting certain criteria.



### Drainage and flooding:

A waterlogged site is not attractive for growing purposes and, though raised beds and additional compost may improve the position, these will cost either owner or user. Consider a field drain where the growing area is limited, or a wet zone for wildlife.

### Sewerage and toilets

In urban areas, many growing sites exist quite happily without toilet facilities, however in more remote locations where participants want to stay for longer periods of time, provision of some services on a site – be it septic tank, connection to the mains or a compost toilet – can be integral to a group's success and may therefore form part of a funding application by a group (subject to the group having sufficient security of tenure to support such an application).

Composting toilets are an environmentally-friendly and lower-cost option, while a mains connected toilet will be the most expensive option. Somewhere in between the two, septic tanks can still be expensive to install, need to be emptied regularly (for which there will be charges), and must be registered with the Scottish Environment Protection Agency (SEPA). In some instances, in particular where location relative to services proves financially limiting, temporary portable toilet hire when required for events on site might be the most practical option. In all cases, options should be discussed with the planning department of the local authority, the Building Regulations Officer, the Environmental Health Officer and SEPA at an early stage, as planning permission, building warrant and/or SEPA consent may be required

### Power, pipes and cables

Providing power to a site is likely to be expensive unless the location is adjacent to an existing supply. Again, it depends on the type of project, and costs will relate to location. If power is to be brought to the site, then consider carefully the route of the supply – the location of all underground pipes, cables and trenches should be left free for maintenance purposes. Many sites operate off grid, where necessary using solar lights and a flask and the occasional battery or petrol power tool.

### Buildings and Other Structures

Consider what is required or envisaged for growing activities, such as sheds or polytunnels or meeting space and specifications for the size, number and location of these. In all cases, landowner permission is required. At the time of writing, planning permission is required for greenhouses, polytunnels and sheds (unless on agricultural land and used for agricultural purposes in the course of a business). Under Scottish law, because buildings are said to 'run with the land', they automatically belong to the landowner regardless of who built them, making it essential to consider any building proposals carefully.

### Livestock

Some forms of community growing, such as city farms, have traditionally included the keeping of livestock. There are particular rules governing livestock, animals and pets on allotments. Even on sites where no other livestock is proposed, there is often interest in beekeeping, not least because this can aid biodiversity objectives. While there are many

positives associated with beekeeping, the location of any hives should take into account proximity to footpaths, housing and operating machinery. In addition, there needs to be a beekeeper who is registered/ experienced (for example Basic Beemaster Certificate) and maintains insurance (as a member of the Scottish Beekeepers' Association they will have public liability insurance cover). The number of hives ought to be considered, as should screening and swarm control, onsite emergency contact details and cover where the beekeeper is absent.

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A simple traffic light scoring system is suggested as an easy way of finding out how suitable a site is for community growing use (see example below). When inspecting a site, each criterion is assessed and ticked on the table according to one of the following assessments:

- **Red** – this criteria is a barrier to community growing use and may be impossible, or take much effort, to change.
- **Amber** – indicates a criteria that, while not a complete barrier to community land use, may need managing or may be less desirable.
- **Green** – the criteria is ideal or workable for community land use.

The criteria have been grouped into three categories those that relate to growing and cultivation activities, those that relate to the needs of the people using the site, those that impact on how the site will be managed.

Gathering as much data as possible will help inform choices between different locations. Some of this data may also help decisions about the type of agreement that should be entered into, and how a site should be operated. It will also provide valuable information that can be used by the groups themselves.



# Traffic Light Site Assessment Tool

Criteria	Traffic Lights	Criteria	Traffic Lights	Criteria	Traffic Lights
<b>Growing Information</b>		<b>User Information</b>		<b>Management Information</b>	
Soil type	● ● ●	Access – pedestrian and vehicular, regular and occasional	● ● ●	Contamination – previous uses, dumping, on register	● ● ●
Site condition – grassed, planted, cultivated, abandoned...	● ● ●	Public transport	● ● ●	Planning	● ● ●
Slope	● ● ●	Location – proximity to users	● ● ●	Neighbours – type and proximity	● ● ●
Aspect	● ● ●	Parking – deliveries, users, regular and occasional	● ● ●	Biodiversity – protected species, SSSI	● ● ●
Size	● ● ●	Structural items on site – trees, hard landscaping etc.	● ● ●	Community interaction possibilities – nearby schools, hospitals, prisons, etc.	● ● ●
Height > sea level	● ● ●	Services – water, power, sewerage, waste	● ● ●	Vermin	● ● ●
		Storage/shelter – there or potential	● ● ●	Boundaries, definition and maintenance	● ● ●





## Financial Practicalities

Costs to consider could include:

- Initial costs of discussing a proposed project, setting up formal agreements and any fencing or access arrangements.
- Survey or other related fees.
- Legal fees.
- Transaction costs such as Land and Buildings Transaction Tax (LBTT) . More information on this is available from [Revenue Scotland](#).
- Registration dues if the land is to be sold, or if it is to be leased for a period of 20 years or more.
- Insurance.

**Council Tax:** In terms of the Council Tax (Exempt Dwellings) (Scotland) Order 1992 (as amended), woodlands, market gardens, orchards, allotments or allotment gardens are exempt.

**Non-domestic rates:** Some community growing activities may be subject to non-domestic rates (business rates). It is the nature of the land use that is relevant, not whether this is being done in the course of a business per se. There are, however, exemptions and reliefs available that may be relevant to community growing groups, the key ones of which are:

- **Agricultural Exemption.** Agricultural land and buildings are generally exempt from rates, with agricultural lands being defined as “any lands and heritages used for agricultural or pastoral purposes only or as woodlands, market gardens,

*orchards, reed beds, allotments or allotment gardens [...] but does not include any buildings thereon other than agricultural buildings [...] or any land kept or preserved mainly or exclusively for sporting purposes”*

- **Charities.** Registered charities are entitled to apply for relief of 80%, which may be topped up to 100% under discretionary powers (see below).
- **Non-profit Organisations.** For non-profit organisation that are not registered charities (and for registered charities looking to top up their 80% relief) local authorities in Scotland have discretionary powers to grant up to 100% relief. Groups interested in applying for discretionary relief should contact their local authority’s business rates department.
- **Subsidies:** If land is classed as agricultural, entitlement to any agricultural subsidies may be affected if part of this is dedicated to community growing use (there are [further details on available subsidies and eligibility requirement](#), or contact your [local rural payments office](#)).

## Further financial considerations for private landowners:

Some costs may be recoverable by landowner or community group, but not all. It makes sense, therefore, to keep this to a minimum by finding the right site and establishing everyone’s requirements and expectations before taking negotiations to the next stage.

Landowners could consider delaying the conclusion of any deal to establish whether any of these costs could be covered by any funding the group might apply for, in which case it may be appropriate to make them responsible for carrying out any necessary works and meeting the costs of these (possibly in lieu of paying rent for use of the site, or part thereof).

However, care should be taken to avoid placing a group in the awkward position of being unable to finalise a lease before they get funding, but also being unable to secure funding until a lease is in place, which is an unfortunately common issue for many groups.

**Income/Corporation Tax:** Income from the letting of land must be declared as part of the landowner’s tax return. As such, letting land may result in changes to the taxation of the owner but, as it is also possible to offset certain costs, more tax may not necessarily be due. It may be advisable to seek financial advice.

**VAT:** The lease of land is normally exempt from VAT unless the landowner has opted to waive exemption from VAT, when VAT would then become payable on the rent.



**Inheritance or other taxes:** In most cases, using land for a private activity such as growing will mean that the land is not a business asset and so there will be no business tax reliefs. If the land is being used for business purposes, however, then certain reliefs may be applicable. If in any doubt about this, advice should be sought from a professional.

## Further financial considerations for public landowners

### Public Accounting Rules

Most publicly-funded bodies in Scotland must adhere to the Scottish Public Finance Manual, in terms of which assets may be disposed of for less than market value – whether by sale or by lease – where the public benefit of doing so justifies this. Similar provisions apply to local authorities under the *Disposal of Land by Local Authorities (Scotland) Regulations 2010*. However, as a disposal at less than market value creates a reduction in budget (the difference between the actual price and the market value), disposing authorities may sometimes be reluctant to consider significant discounts. In turn, payment of a full (or near full) market rent or purchase price can present a significant hurdle for community growing groups with limited financial resources.

The challenge is finding ways to ensure that take-up of land for community growing isn't curtailed by this. For example, consideration could be given to grant-funding projects to enable them to get started, and to build

up to being able to pay a market rent, with grants tapered over time to encourage projects to become self-financing. As well as helping to overcome initial financial hurdles, this kind of model can help create robust community projects, and a transparent system of opportunities/support for the use of sites. However, this still places an initial burden on projects to justify investment, and some are more able to measure up to this than others.

## Legislative and Regulatory Framework

Any right to own, lease, or use land for any given purpose comes with responsibilities. Understanding the legislative and regulatory framework governing how land can be used is important. Landowners must take all reasonable steps to ensure that any activities carried out on their land are conducted following the relevant legislation and regulations. Equally, those carrying out activities must make themselves aware of what the relevant legislation and regulations require.

### Environmental legislation:

Deals with contamination, invasive plant controls, waste management, trees, special habitat designations and protected species. Standards and enforcement of environmental matters are the responsibility of two bodies:

- **SEPA:** regulates activities that may pollute

water and air, waste storage, transport, treatment and disposal, and activities that may contaminate land.

- **Nature Scot:** looks after Scotland's nature by providing policy and guidance on wildlife and habitats.

### Contaminated Land

Some sites may be at risk of being contaminated, especially vacant brownfield sites, which must be considered along with land use. In addition, where the growing of food is to happen, the risk needs to be assessed accordingly.

### Checking for contamination

All local authorities are required to maintain a register of contaminated land, and this should be checked to ensure the site is not listed and to see what testing may or may not have been undertaken. However, this information may not be up to date. Just because land isn't on the register, it doesn't mean there aren't potential contamination issues, and it's essential also to check the history of previous uses on the land and adjacent to it as far as possible. Contact your local authority contaminated land officer. It may be appropriate to have soil testing carried out.

Contamination does not necessarily mean a site cannot be used. Depending on the nature of the contamination, various low cost solutions may still allow food growing. You can find more detailed information in the [Contaminated Land Guide](#).



## Responsibility for contamination

Generally, the law places responsibility for the remediation of a contaminated site on the person who caused or permitted the pollution (the polluter) or, failing that, the owner or occupier.

Contamination can also exist on land without causing problems until action is taken that creates a pathway for the contamination to move somewhere where it becomes a problem. In these circumstances, it could be the person who created the pathway who is seen as the polluter, as well as (or instead of) the person who put the contaminant in the ground in the first place.

Another way that someone can be classed as a polluter along with the person who caused or mainly permitted the pollution is by taking over the site with full knowledge of what is in it, for example, a purchaser or tenant with full knowledge. A landowner could do this by writing it into the contract, making all relevant records and surveys available to the incoming purchaser or tenant, and making sure that any discount on the price or rent as a result of declaring contamination is properly documented.

If there is any question about who may be responsible for contamination or how this may be attributed to different people; professional legal advice should be sought.

### Tree preservation orders

Local planning authorities can place Tree Preservation Orders (TPOs) on any tree (or sometimes groups of trees) to protect them from deliberate damage and destruction. If

a site has trees subject to a TPO, the local authority's permission must be obtained before **any** work is carried out on the protected trees.

If there is any doubt as to whether a TPO might protect a tree (or trees) on a site, confirmation of this should be sought from the local planning authority before any works are carried out. Do check whether you need a felling licence first, irrespective of whether or not trees are covered by a TPO.

### Invasive, non-native species

Invasive non-native species are plants (or animals) that have been introduced to an area and can spread rapidly and become dominant. Common examples include Japanese Knotweed, Ragwort, Giant Hogweed or Himalayan Balsam. It is illegal to release, plant or allow non-native species to spread into the wild. This includes planting or allowing non-native species to spread into woodlands, road verges or river corridors in the countryside, all considered 'in the wild'.

In addition, if non-native species spread onto land that is not 'in the wild', the owner of that land could raise a civil action under the law of nuisance. (See below)

Landowners should ensure sites are free from such species and that anyone using or managing their land does so responsibly. Treatment and disposal of invasive non-native species – both plant and root – need careful consideration, given restrictions on herbicide usage and dumping (SEPA's further information).

## Nuisances

Nuisance can be any action or failure to act that interferes with people's use and enjoyment of land or property, or that could have a negative effect on health, for example, as a result of noise, odour or smoke.

This may require consideration to be given to how certain activities are managed, for example, bonfires or the making of compost.

There are also specific legislative requirements that must be complied with in terms of certain potentially harmful activities, for example, the control, use and storage of fuel, disposal of any contaminants or controlled substances, and waste disposal. Make sure that all parties are aware of what the relevant requirements are.



## Access

The Land Reform (Scotland) Act 2003 introduced a general right of responsible access across most land, detailed guidance on which is given in the Scottish Outdoor Access Code (SOAC), which is overseen by NatureScot. Essentially, with some exceptions such as around a private dwelling or a field sown with crops, the public may take a responsible right of pedestrian access over land, and landowners or managers must allow this. Some relevant summaries of the law surrounding access, legal responsibilities, and guidance on how to manage access responsibly can be found on the [Outdoor Access website](#), including A Brief Guide to Laws relevant to Outdoor Access in Scotland and A Brief Guide to Occupiers' Legal Liabilities in Scotland in relation to Public Outdoor Access.

**Equality Act:** [The Equality Act 2010](#) imposes obligations on everyone concerned with the provision of services to the public or to a section of the public, whether in the private, public or voluntary sectors, and whether services are in return for payment or free of charge, including public access to community growing or allotment sites. When providing such services, it is unlawful to discriminate against anyone looking to access services because of their age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity status, race, religion or belief, sex, or sexual orientation. There is also a duty to make reasonable adjustments to ensure that disabled people can access services provided, which can include changes to policies or practices (for example, allowing assistance dogs onto a community growing site, even if other dogs wouldn't normally be allowed), as well as to physical features (for example, creating step free access to a site). This goes beyond simply avoiding discrimination and requires service providers to anticipate the needs of potential disabled service users for reasonable adjustments. In doing this, the Act does not specify any particular factors that should be taken into account, but these will include the extent to which it is practicable for any potential adjustments to be made, the financial and other costs of these, and the scope of the service provider's financial and other resources, with it being more likely to be reasonable for a service provider with substantial financial resources to have to make an adjustment with a high cost than for a service provider with fewer resources. For further information on service providers' duties in this respect, see guidance published by the Equality and Human Rights Commission and their [statutory code of practice for services, public functions and associations](#).

Public landowners are subject to the public sector equality duty, which requires due regard to be given to several equality considerations in decision-making, namely the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between different people when carrying out their activities

Public landowners are also subject to the Fairer Scotland Duty placing a legal responsibility on particular public bodies in Scotland to pay due regard to (actively consider) how they can reduce inequalities of outcome, caused by socio-economic disadvantage, when making strategic decisions.

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## Food safety legislation

If community groups or individual plot-holders grow produce on land and sell it (or any other food, for example, at an Open Day), they may need to comply with the relevant Food Safety legislation. Details can be found on [Food Standards Scotland's website](#).



## PLANNING MATTERS





## PLANNING MATTERS

Planning permission is needed for all development, the definition of which covers both:

- i. physical development (e.g. erecting sheds, polytunnels, etc); and
- ii. any material changes in the use of any buildings or land (e.g. using an agricultural field for anything other than purely agricultural purposes).

However, if land is used purely for agricultural purposes, then planning permission is not needed, with the definition of agriculture including:

**“horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes...”**

So, if a site is to be used purely for food growing, then planning permission should not be needed. But, where a site is to be used for more than just food growing (for example, for educational or social purposes), or where it is proposed to erect any structures, then planning permission is likely to be required. There is though one caveat to this, as some small-scale works such as the erection of fencing or some agricultural buildings may be carried out without having to apply for planning permission, if the works fall within the definition of ‘permitted development’ (for full details on which, see ‘permitted development’ below).

For definitive advice as to whether planning permission is required for any given project, as well as key issues that any planning application might need to address, contact your local authority’s planning department as early as possible in the process, as different local authorities have been known to have different views on when planning

permission is and isn’t needed. A lot will also depend on the scale and scope of the activities to be carried out, and any physical infrastructure that might be needed. In addition, advice on individual cases is available from the Community Land Advisory Service on request.

In parallel with seeking planning permission, check any physical works comply with building regulations and whether a building warrant is required.

### **Permitted Development (the Town and Country Planning (General Permitted Development) (Scotland) Order 1992).**

As highlighted above, it is not necessary to apply for planning permission for some small-scale works if these fall within the definition of ‘permitted development’, with the classes of ‘permitted development’ that are most likely to be of interest to community growing projects being:



- The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure (subject to a maximum height of 2m, or 1m if within 20m of a road, and not as a means of enclosing a listed building);
- The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with any other permitted development (other than certain domestic developments, and gates, fences, walls or other means of enclosure allowed under the first bullet point above);
- The erection, construction or alteration of any access ramp outside an external door of a non-domestic building (subject to various conditions about the length and height of any such ramp);
- The use of land (other than a building or land within the curtilage of a building) for any purpose, except as a caravan site, on not more than 28 days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use (for example, this would allow land to be used for occasional events etc);
- Works for the erection, extension or alteration of a building on agricultural land (subject to certain conditions about what the land on which this would be erected is used for (for details on which, see below), the building's size/use/proximity to neighbouring uses, etc., and to submission of 'prior notification' to the

Council before the building is erected;

- The carrying out of any works required in connection with the improvement or maintenance of watercourses or land drainage works;
- Works for the erection, extension or alteration of a building, plus certain other operations, on forestry land (subject to conditions about the building's size/use/proximity to neighbouring uses, etc, and to submission of 'prior notification' to the Council before the building is erected);
- The installation, alteration or replacement of solar PV or solar thermal equipment on a nondomestic building;
- Works on agricultural or forestry land for the erection, extension or alteration of a nondomestic building for the generation of energy from, or storage of, biomass; and
- certain works carried out by local authorities, provided that: the cost of this does not exceed £100,000; it does not constitute bad neighbour development; and the development would not constitute a material change of use of any buildings or other land.

It should though be noted that, whereas many community growing groups may be interested in erecting an agricultural building as permitted development, this is only allowed if:

- this would be erected on agricultural land, which is defined as "*land in use for agriculture and which is so used for the*

*purposes of a trade or business...*", with many community growing sites not falling within this definition even if they are otherwise used for agriculture, although different local authorities seem to take different approaches to this; and

- the land also needs to be part of an agricultural landholding of at least 0.4 ha to qualify for agricultural permitted development rights, with many community growing sites being smaller than this.

It is also important to note that permitted development rights may be restricted in certain areas, for example in sensitive locations such as within the grounds of a listed building and/or within a conservation area, in which case an application for planning permission will be needed even if works would fall into one of the categories listed above otherwise.

It should be noted that the Scottish Government is considering a number of changes to permitted development rights in Scotland, which could remove the need to apply for planning permission for a number of works commonly carried out on community growing sites, for example the erection of sheds, greenhouses, portable buildings, containers, and communal huts on these, as well as the creation of car parking, and/or accesses. At the time of writing, it is not known when any such changes might be made.



## Applying for and obtaining planning permission

Where an application for planning permission is required, this will be assessed against the Council's Development Plan and other material planning considerations (for the definition of which, see below), with specific local policies likely to vary across the country. In all cases though, it will be necessary to ensure that the natural and built environment is protected, any proposed development is suitably serviced, and there is no negative impact on neighbouring amenity. And, in this respect, the key considerations are the same as those which should be taken into account when identifying a suitable site. Some matters that local authorities might be specifically interested in when assessing a planning application are however set out below.

### Impact on nearby residents' amenity

It is important that the proposed development does not adversely affect the amenity of nearby residents (for example, as a result of noise, fumes, dust, over-looking, increased numbers of vehicles using or parking on nearby streets, or loss of existing open space), and these issues should be borne in mind when preparing the layout and design of any given site, with steps taken to preserve the amenity of nearby residents as much as possible (for example, by providing landscaping by way of screening between the site and neighbours where appropriate). Early discussion with local residents can allay any fears they may have, and garner their support for the proposal.

### Car parking and access

The number of car parking spaces to be provided, the location of those spaces, and the means of access to the site all need to be carefully assessed in order to ensure all such arrangements are safe and appropriate to the site context. The local authority may have car parking standards that need to be adhered to and, if fewer spaces are to be provided than relevant standards require, then good reasons for this should be given – for example, a lower number of spaces may be justified where a site is readily accessible on foot, by bike and by public transport. In all cases, the local authority may ask for details of the anticipated number of users and how they are expected to access a site to be submitted with an application to ensure no access related issues arise.

### Protection of species

Certain species of flora and fauna are protected by legislation, and works that potentially harm these species or their nesting or hunting areas are unlikely to be acceptable, as are any works that might damage any existing trees. Consideration should be given to the presence of any protected species or trees on a site at an early stage, and the planning authority may ask for formal surveys to be submitted in some cases to demonstrate that no negative impacts in these respects might arise.

### Flooding

Certain areas of land are more susceptible to flooding than others, and certain uses of land are more appropriate within such areas than

others. Open space, including community growing projects, may be acceptable in areas prone to flooding, although this is by no means definitive. And, where there is any potential flood risk, a flood risk assessment may be needed to demonstrate that any proposed development is appropriate in the context of this.

### Drainage

Related to the need to ensure development would not be at risk of flooding, it is necessary to ensure that it is appropriately drained, with this being particularly relevant where new built structures such as sheds or polytunnels are proposed. Drainage impact assessment may be requested in connection with larger scale developments, but should not be needed for smaller scale structures such as those typically found on a community growing site, for which it should be sufficient to show that water run-off would be collected in water butts or similar for re-use.

### Hand washing

If a compost toilet is proposed, then hand washing facilities are likely to be required, with the most appropriate way of providing these being something to discuss with the Council's Environmental Health officers. There are though a number of systems available which can be filled with hot water as and when required, so a connection to the mains should not necessarily be required, and examples of such systems having been accepted by Council Environmental Health officers are available.



## Other material planning considerations

There is no set definition of other material planning considerations that should be taken into account when assessing a planning application, but some good starting points for any proposed community growing use may be to look for the following:

- **Scottish Government Policy** – in terms of which the Scottish Government has consistently expressed support for land being dedicated to food growing through **Scottish Planning Policy**, the preparation of **National Planning Framework 4**, and **National Food and Drink Policy – Becoming a Good Food Nation**, and these are worth referring to high level support for community growing projects in principle;
- Local authority's **food growing strategy** – what does this say about the availability of space for community growing projects, and what spaces are identified as suitable for this use?

- Any **Local Place Plans** for the area (if any exist) – are any spaces for community growing use identified here?
- **Local Outcome Improvement Plan** – Is there any reference to increasing provision of growing spaces in this? Or are there any outcomes that a community growing project will help achieve?

In all cases, it is advisable to provide the local planning authority with as much information on the proposed community project as possible, as early as possible, as this can help keep the time (and cost) associated with making an application for planning permission down.

## Further Resources

- Community Ownership Support Service guide to engaging with the planning system.
- Woodland Trust note on planning system (with focus on protections for trees and woodlands within this).
- [Planning Circular 2/2022: Development Management Procedures](#), which provides detailed guidance on the procedures to be followed when a planning application is made, and how planning applications are determined.



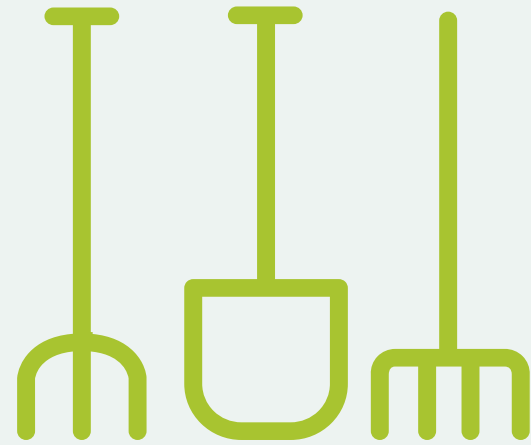
## Illustrative Examples

Below are several examples to illustrate when planning permission is likely to be needed, and when it isn't. These are though intended to be illustrative only, and the local planning authority should always be consulted about any specific proposals before proceeding to ensure all relevant planning requirements are satisfied.

**Table of planning scenarios**

Land use scenarios	Planning requirements
Use of field as allotments.	Not development. Planning permission not required.
Use of field as allotments, with boundary fence.	Only the fence falls within the definition of development but, provided this meets the requirements with regards to height etc set out above, this can be erected under permitted development rights without needing to apply for planning permission for any element of the proposed use/works.
Use of field as allotments, with sheds erected on this for use by plot holders.	Although the use of the land is agricultural in nature, this is not being carried out in the course of a trade or a business, so it is likely to be necessary to apply for planning permission for the sheds.
Use of field as market garden, with a polytunnel erected on this for growing produce.	The use of the field as a market garden is not development, so no planning permission is required. And, if the site exceeds 0.4 ha in size, then it may be possible for the polytunnel to be erected under agricultural permitted development rights, subject to first submitting prior notification of this to the Council. However, it would be advisable to check that the Council agree that this can be done under permitted development rights in the first instance.
Use of field as market garden, with compost toilet and shed for tea breaks.	As the structures being erected are not directly required for the purposes of agriculture themselves, it is likely to be necessary to apply for planning permission for these.
Use of field for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Likely to be considered a material change of use of the land for which planning permission is required. Likewise, it is likely to also be necessary to apply for planning permission for any sheds/polytunnels/compost toilets etc associated with this (but not for any fencing, provided this meets the requirements with regards to height etc set out above, to be erected under permitted development rights).
Use of part of a public park for allotments.	Not development. Planning permission not required
Use of part of a public park for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Could be argued that this is a continuation of the park's existing use and so planning permission should not be needed, other than for any built structures that might be needed (other than any fences that could be erected under permitted development rights),but would be advisable to consult the planning authority in the first instance.
Use of vacant site in city for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Likely to be considered a material change of use of the land for which planning permission is required. Likewise, it is likely to also be necessary to apply for planning permission for any sheds/polytunnels/compost toilets etc associated with this (but not for any fencing, provided this meets the requirements with regards to height etc set out above to be erected under permitted development rights).





## COMMUNITY EMPOWERMENT



# LAND REFORM AND COMMUNITY EMPOWERMENT

Since the creation of the Scottish Parliament, land reform and community empowerment have been the focus of a lot of attention, resulting in a number of rights (for tenants and community bodies) and obligations (on landowners) that seek to address historical imbalances in terms of who owns, occupies, or otherwise has a say in the management of Scotland's land, and who ultimately benefits from this. Of potential relevance to community growing projects, these currently include:

**Rights to make asset transfer requests**, which can provide community growing groups with a route to getting either a lease or ownership of publicly owned land;

**Rights to Buy**, which can provide community growing groups with a route to buying land in their local area, although only in certain circumstances;

**Rights to make participation requests** in respect of services delivered by local authorities and certain other public sector bodies, which could be used to start a dialogue around the potential for a community growing group to take over the delivery of services such as the maintenance of public land, amongst others; and

**Obligations on local authorities with regards to the provision of allotments and the preparation of food-growing strategies**, which are intended to increase the availability of land for allotments and other food-growing projects.

These rights and obligations are though constantly evolving, with details of previous and anticipated changes in this area available from the Scottish Government's land reform [webpages](#). Much of this change is driven by the Scottish Land Commission, established to stimulate fresh thinking, support change on the ground, and drive forward the reforms that are needed to create a Scotland where land is owned and used in fair, responsible ways and productive. In particular, this includes potential ways to increase access to agricultural land, guidance for tenant farmers, examples of projects that have transformed previously vacant land for community growing uses, proposals for future changes to community rights to buy, and a wide range of resources about the ownership and use of land which may be of interest to anyone looking to find out more about this topic.

**Useful external resources:**

- [Scottish Government land reform](#)
- [Scottish Land Commission Website](#)



## Asset Transfer Requests (Part 5 of the Community Empowerment (Scotland) Act 2015)

Asset Transfer Requests are a route for eligible community bodies to take on either a lease or ownership of publicly owned land or buildings, with the key features of this being that:

- 'Relevant Authorities' to which an Asset Transfer Requests can be made include local authorities, the Scottish Ministers, and a range of public bodies such as Historic Environment Scotland, Scottish Canals, and the [Scottish Environment Protection Agency](#);
- Asset Transfer Requests may be made for any public land/buildings, irrespective of whether they are deemed to be surplus to the current landowner's requirements (although, where assets are dedicated to an active use that would be jeopardised by a transfer, then this may be a good reason to refuse any such request);
- Once an asset transfer request has been made, the land/building(s) to which it relates cannot be sold or let to anyone else until the request has been dealt with (unless advertised for sale or lease before the request was made, in which case this does not apply);
- An asset transfer request must be dealt with within a period of 6 months unless agreed otherwise between the parties and must be agreed to unless there are reasonable grounds for refusing. For example, a request for a lease could not

reasonably be agreed to if this would put the landowner in breach of the terms of an existing lease, or where doing so might disrupt public services that are currently being provided from the land/building(s) in respect of which the request is made.

- Land/buildings may be transferred at less than market value where clear social, economic and environmental benefits can be demonstrated; and
- If an asset transfer request is refused, the community body making the request has a right to appeal that decision.

It should though also be noted that, while the asset transfer process provides a formal route for eligible community bodies to request a lease or ownership of land or buildings as set out above, this does not prevent public landowners from agreeing to a transfer out-with this process if both parties wish to do so.

For full details of the process and things to think about from the perspective of either a relevant authority or a community body, the [Scottish Government has prepared detailed guidance on this](#). In addition, the [Community Ownership Support Service](#) exists to support both community bodies and relevant authorities in their respective journeys through the asset transfer process, with a number of useful resources available on their website, [including a detailed road map of the process](#).

### Useful external resources:

- [Scottish Government Guidance](#).
- [Community Ownership Support Service](#).

## Rights to Buy

There are now a number of different right to buy mechanisms, with different ones potentially being relevant in different circumstances, as set out below. In all cases, detailed information is available from the [Scottish Government's Community Land Team](#) or [Community Land Scotland](#), which exists to provide a voice for community land ownership, with some useful resources available on the [Community Ownership Support Service's website](#) as well. And, while the cost of exercising a right to buy land can be significant, this may be mitigated by funding from the [Scottish Land Fund](#).

Against this background, the following paragraphs provide an overview of the different rights to buy in the specific context of the acquisition of land for community growing, and their potential relevance in this respect.

## Part 2 Right to Buy (Part 2 of the Land Reform Scotland Act 2003 (as amended))

Eligible community bodies across Scotland have a right to buy land in their community area, but only when the landowner is looking to sell it and subject to the community body first registering an interest in this. In other words, this effectively gives a community body with a registered interest priority over other potential purchasers when land comes onto the market, but is not a means of forcing a landowner to dispose of their land, or of requiring a landowner to sell their land for less than market value. [There are also a number of requirements that must be met before an interest can be registered](#).



In practice, the potential costs and the length of the process can mean that the Part 2 Community Right to Buy is not the first choice of many community growers, but there are some successful precedents. For example, Comrie Development Trust used the Part 2 Community Right to Buy to acquire a disused prisoner of war camp in Comrie, Perthshire from the Secretary of State for Defence, and this is now being used to provide allotments and a community orchard, [as well as playing fields, data storage and business units](#).

### **Part 3A Community Right to Buy Abandoned, Neglected, or Detrimental Land (Part 3A of the Land Reform Scotland Act 2003 (as amended))**

Eligible community bodies have a right to buy land which is abandoned, neglected, or being managed in a way which is detrimental to the environmental wellbeing of the community, with the existing landowner required to sell the land if a successful application to exercise this right is made. There are though a number or requirements that have to be satisfied for an application to exercise this right to be successful, including demonstrating that the purchase (i) would be in the public interest, (ii) would further the achievement of sustainable development, and (iii) has community support, and also that it has not been possible to agree a negotiated sale in the first instance. [Full details of the relevant requirements in this regard, including guidance and the relevant forms, are available.](#)

This is then a somewhat complex process, which has had only limited uptake in the first few years since coming into force in June 2018, with no examples of an application to exercise this right to buy having been successful to date (as at October 2022).

### **Part 5 Community Right to Buy to further Sustainable Development (Part 5 of the Land Reform Scotland Act 2003 (as amended))**

Eligible community bodies have a right to buy land where it can be demonstrated that this would further sustainable development, or to nominate a third-party purchaser to take title to the land being acquired, with the existing landowner again required to sell the land if a successful application to exercise this right is made. There are though also a number or requirements that have to be satisfied for an application to exercise this right to be successful, including demonstrating that the transfer of the land to the community body is (i) likely to further the achievement of sustainable development, (ii) in the public interest; (iii) likely to result in significant benefit to the relevant community to which the application relates, and (iv) the only practicable, or the most practicable, way of achieving that significant benefit, in addition to which it is also necessary to demonstrate that not granting consent to the transfer of land is likely to result in harm to that community. Full details of the relevant requirements in this regard, [including guidance and the relevant forms](#).

This is then another complex process, which has also had only limited uptake in the first few years since coming into force in June 2018, with no examples of an application to exercise this right to buy having been successful to date (as at October 2022).

### **Agricultural and crofting rights to buy**

Agricultural and crofting land may be subject to specific agricultural and crofting rights to buy, albeit these only apply in limited circumstances, as a result of which these don't tend to be relevant in a community growing context, and so are not considered further here.

#### **Useful external resources**

- [Scottish Government Land Reform Team](#)
- [Community Land Scotland website](#)
- [Community Ownership Support Service resources on Community Right to Buy](#)
- [Scottish Land fund](#)

### **Participation requests (part 3 of the Community Empowerment (Scotland) Act 2015 and the Participation Request (Procedure) (Scotland) Regulations 2017)**

Participation requests are intended to give community bodies an opportunity to highlight community needs and issues, and become involved in delivering changes or improvements to services provided by (or



on behalf of) specified Scottish public sector bodies ([a list with these including bodies such as local authorities and health boards](#)).

In the context of community growing, examples of services in respect of which a participation request might be made include:

- the provision and management of allotments;
- planting and maintenance of public sector land;
- processing garden or food waste in a community composting scheme;
- becoming involved in supplying food and catering services; and
- providing activities and facilities to support physical or mental health.

Where a Participation Request has been made, it must be agreed unless there are reasonable grounds for refusing it, with the decision to be made within 30 days from the receipt of all necessary information from the community body. However, while this appears to offer scope for community groups to at least start a dialogue around the delivery of services such as those set out above in a relatively accessible way (given that requests are to be agreed unless there are reasonable grounds for it not to be, and the timescales for doing so), no examples of community growing projects having gone down this route have been identified to date.

For further information on when and how participation requests might be used, the

Scottish Government has prepared detailed [guidance](#) for both community bodies and relevant public sector bodies, and a number of further resources are available on the [Scottish Community Development Centre's website](#) as well.

#### Useful external resources

- [Scottish Government guidance](#)
- [Scottish Community Development Centre Resources](#)

### Food Growing Strategies and obligation to provide allotments (Part 9 of the Community Empowerment (Scotland) Act 2015)

Local authorities across Scotland are required to prepare Food Growing Strategies for their respective areas, with the dual purpose of:

- identifying land in the area that may be used for allotments or other forms of community growing; and
- describing how, where certain triggers are met, the local authority intends to increase the provision of both allotments and other areas of community growing land in that area, especially in areas of multiple deprivation.

At the same time, local authorities are also required to take reasonable steps to provide allotments to people within their area who request them, and to ensure that waiting lists for allotments in their area do not exceed certain limits.

[Further information on these requirements, including guidance on the preparation on food growing strategies is available.](#)

In practical terms, it can be helpful to refer to the relevant local food growing strategy if looking to make a case for an area of land to be dedicated to community growing (for example, when making an application to exercise a right to buy land for this purpose, or making an asset transfer request in respect of land for the purpose, or applying for planning permission for the change of use of land to such a use), in addition to which there is merit in anyone with an interest in dedicating any particular areas of land to community growing use to engage with the relevant local authority to have this reflected in the local food growing strategy as well.

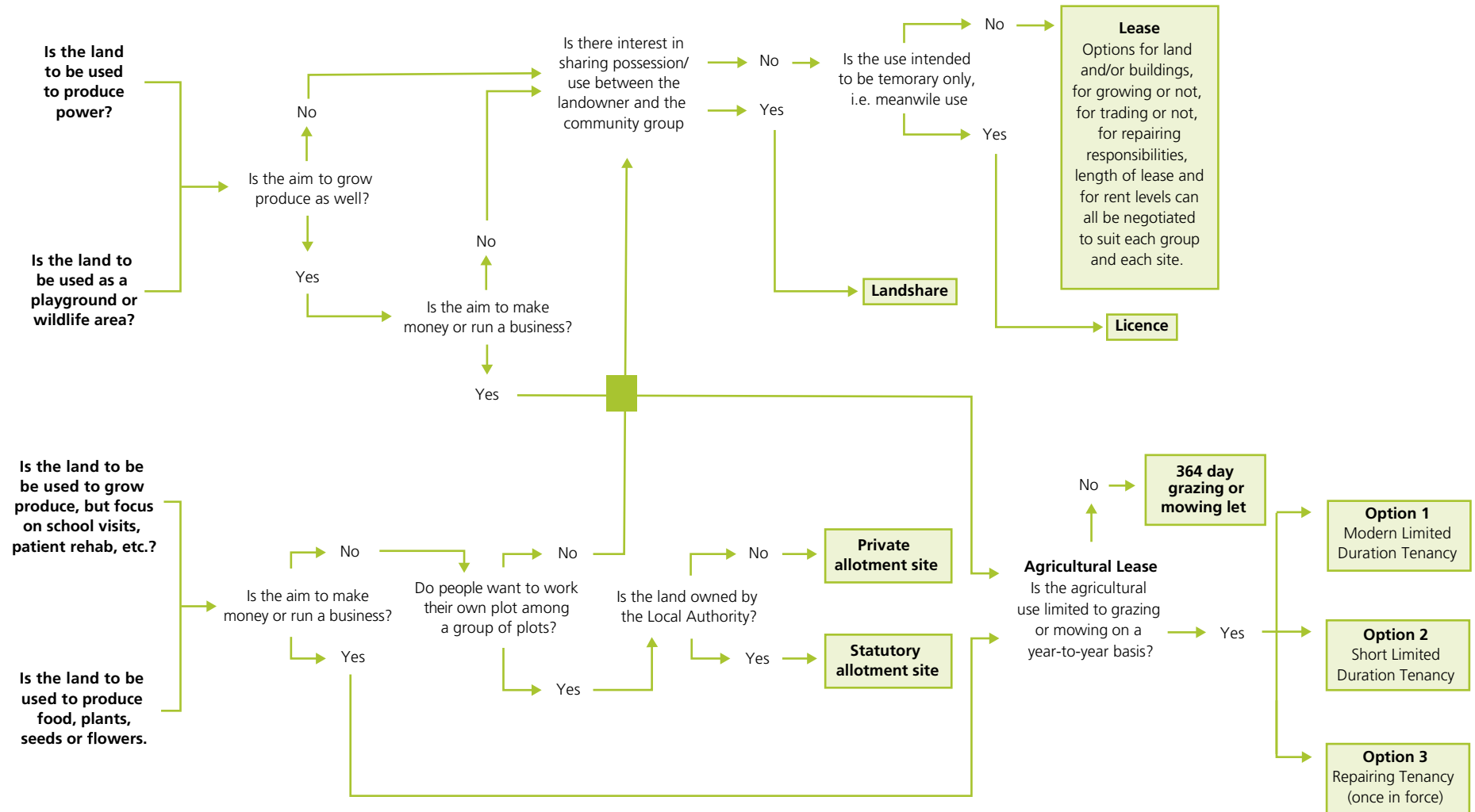




## LEASES, LICENCES AND LANDSHARE AGREEMENTS



# TYPES OF LAND AGREEMENT





# LEASES, LICENCES AND LANDSHARE AGREEMENTS

The perfect site has been identified, everyone is keen to get growing – the question now is what form of legal arrangement should be put in place to allow access to the land for this purpose while ensuring that it is clear what rights and responsibilities the respective parties have? In practice, few community growing groups own their land, and negotiating a sale/purchase of land is beyond the scope of this guidance, although support for community bodies wishing to acquire land is available from either [Community Land Scotland](#) or, for community bodies looking to acquire public land by making an asset transfer request, the [Community Ownership Support Service](#).

The focus of this section is on leases, licences and landshare agreements, including details of the different forms of agreement that may be used in different circumstances, and legal and practical requirements to be taken into account in respect of these.

## Leases

A lease is a contract by which one person can occupy another's property for a finite period in return for payment of some form of rent (whether in cash or in kind). Where a lease differs from a regular contract is that, if properly constituted, the rights conferred are not just enforceable against the landowner who entered into the contract in the first place, but also against anyone to whom that landowner subsequently sells the land. To be properly constituted in this regard, a number of criteria must be met, in particular, that the lease must specify:

- The parties to it;
- The land to which it relates;
- The length of time for which this is let; and
- The rent to be paid.

These elements are looked at in more detail below, along with other key terms that should either be covered expressly in any lease, or might be implied in this.

In addition, for the tenant under a lease to gain a right that is enforceable against a landlord's successors in title, it is essential that:

- Where the lease is for a year or more, this is in writing (this is advisable for shorter leases, too, to make sure both parties are clear as to what has been agreed and what their respective rights and responsibilities are);

- Where the lease is for 20 years or more, it is registered in the Land Register of Scotland;
- Where the lease is for less than 20 years, the tenant has taken possession of the subjects of let; (i.e., if a lease has been entered into for a community growing project, the site needs to actually be put to that use by the tenant);
- No lease can be for a period of more than 175 years;
- Finally, a lease would normally be expected to grant the tenant exclusive possession of the property being let, with only limited rights for the landowner to enter onto the land to check that the terms of the lease are correctly being complied with.

Other than the above, the contractual nature of a lease leaves it to the landowner and tenant to agree the terms (covered later in this section) on which they wish to enter into this, and what their respective rights and responsibilities might be. There is no one set model that will fit all scenarios.

Leases can though generally be divided into three broad categories:

- leases of less than a year
- leases of up to 20 years
- leases of between 20 and 175 years

Some of the key pros and cons of each are looked at below.



## Leases of up to a year

Advantages	Disadvantages
Productive use of land while awaiting future use	High ratio of initial financial and time investment in proportion to return over time
Shorter term avoids expectation of continuation	Much more difficult to attract capital or revenue funding investment
Regular opportunities to review terms	Maybe less appealing to tenants in some cases as it is less secure
Writing not necessarily required of for less than a year (although still advisable in the interests of clarity)	

## Leases of up to 20 years

Advantages	Disadvantages
Better value for cost of initial set-up than above	Moderate ratio of initial financial and time investment in proportion to return over time.
Allows for medium term estate planning to change site use	Tied into arrangement for whole term unless an early termination option included
Allows group and project to establish but not be committed for long term	
At three years plus more likely to attract funding	
Opportunity at the end to re-consider terms and conditions for future lets based on past performance	

## Leases of between 20 and 175 years

Advantages	Disadvantages
Best ratio of initial financial and time investment in proportion to return over time	Tied into the arrangement for the whole term unless an early termination option included.
Allows for reliable future planning of income	A very long lease may be too much commitment for some groups
More likely to attract funding and particularly suited to long term crops e.g forestry	Additional costs associated with land registration
Provides long term security, and demonstrates commitment to making long-term contribution to the community.	Inflexible (although can include a break clause)



## Licences

The concept of a licence is less well developed in Scotland than it is in England, but this can be defined as “a contract, falling short of a lease, whereby not the heritage itself but a right to use a particular part of it or to put a particular part of it to some use is granted.” [McAllister, Scottish Law of Leases, Edition 4, 2.51]. Whereas a properly constituted lease will be enforceable against anyone to whom the land is sold during the course of lease (as discussed above), a licence is purely a contractual relationship between the two

parties who originally entered into it. It does not therefore offer this level of security.

Note that, just because a document describes itself as a licence, whether or not it is interpreted as such very much depends on its terms. And, if an agreement bears all the key hallmarks of a lease (as identified above), then it may well be interpreted as such. This is however a somewhat nuanced legal point and, if there is any doubt about this, professional legal advice should be sought.

As a general rule, licences should only be used where both parties are genuinely

looking for a temporary arrangement, in which the occupier may not have exclusive use of the land. They should not be used to try to circumnavigate certain rules relating to leases, or to create a lease in everything but name (which, as highlighted above, may not necessarily be effective anyway).

A template licence agreement and guidance notes on the use of this are available from the property standardisation group. ([Licence to Occupy](#)).

Some of the key pros and cons of a licence are as follows

Advantages	Disadvantages
Relatively simple and inexpensive to set up	Concept not always well understood and so can lead to confusion
Template agreement available online	If not properly drafted, potential to be interpreted as a lease irrespective of intentions
Agreement can be tailored to specifics as required	Lack of security for growers, particularly if land sold on to a third party during the course of a licence
Cost effective option for short term/temporary use of a site	
Doesn't trigger the need to submit a LBTT return	



## Landshare agreements

Land share agreements, as the name suggests, allow for the use of land to be shared between landowner and community growers. This may be through schemes such as Edinburgh Garden Partners, where local residents with more garden space than they can manage are matched with others without a garden of their own to grow in), or they may be ad-hoc arrangements allowing for community growing on a wide range of sites, including land around the likes of schools and hospitals. In lieu of rent, growers and landowners may share in the produce from the land, with the percentage of this due to each to be agreed between the parties.

## Specific types of leases

### **Agricultural Leases:**

Agricultural leases are heavily regulated by agricultural holdings legislation, and it is important to be aware of the implications of this when considering any lease of agricultural land.

Agriculture includes (but is not limited to) horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land (willow), market gardens and nursery grounds and woodlands, if ancillary to other agricultural purposes.

Agricultural Land is 'land (including buildings) used for agriculture for the purposes of a trade or business'.

An agricultural Lease is any lease where an owner lets agricultural land to an occupier in exchange for money or money's worth (for example a service). Where ground is let for growing but no trade or business is carried out, then the agricultural holdings legislation will not apply. However, some community groups may want to run a business – for example a community market garden – and this may well fall under the provision of the legislation. In all cases, where the legislation does apply, then the tenant may acquire the statutory rights under this, whether intended or not.

Where both parties agree that the proposed use of land would not constitute agriculture as defined in the legislation, then any lease should be drafted carefully to reflect this, including an express statement that the lease doesn't create an agricultural tenancy. NB. Just stating that a lease doesn't create an agricultural tenancy may not effectively do so if the land is in fact being put to agricultural use in practice.

There are a number of different types of tenancy that can be created, depending on how long the agreement is intended to last and the relationship between the parties (for further information on which, reference should be made to Scottish Government guidance on agricultural holdings and tenant farming, which includes details of the different types of agricultural tenancy that can be created, and the rights and responsibilities of both parties under these). In addition, the Scottish Land Commission

has codes of practice and guidance to encourage good relationships between landlords and agricultural tenants which is worth referring to as well.

The agricultural tenancy types that are most likely to be relevant to prospective community growing projects are summarised briefly below, although it should be noted that all agricultural leases have strict rules governing each party's respective obligations which should be considered in detail before entering into any such agreement. The law relating to agricultural leases is complex and appropriate legal advice should be sought.

### **Grazing Or Mowing Lets:**

- Temporary agreement for purposes of grazing or mowing only.
- Duration of less than 364 days, held during a specified period of the year.
- Failure to ensure the land is vacated at the end of each grazing period means it becomes a 5 year Short Limited Duration Tenancy

### **Short Limited Duration Tenancies:**

- Lasts for not more than 5 years.
- If allowed to run on for more than 5 years, automatically converts to a MLDT of 10 years (i.e. is extended by 5 years).





## Modern Limited Duration Tenancies “(MLDT)”:

- Lasts at least 10 years or, if lease states that the tenancy lasts more than 5 but less than 10 years, will last for 10 years by default (with potential break after 5 years in a MLDT to a new entrant to farming).
- If a MLDT is not terminated on expiry, it will roll on for a further seven-year term.

For further information, reference should be made to the [Scottish Land Commission’s Guide to the essential features of a MLDT](#).

## Repairing Tenancies:

In addition to the above, there is legislation in place to introduce a new ‘Repairing Tenancy’, which is intended to encourage the long-term letting of land that requires a significant amount of input to bring it into a condition where it can be farmed according to the rules of good husbandry. However, at the time of writing, these provisions have not yet been implemented.

## Private allotment sites:

Leases of private allotment sites will be subject to the same rules as any other growing site. For examples of allotments established on private land see the Scottish Allotments and Gardens [Grow Your Own Allotment](#).

- [Template for simple allotment leases](#).

## Heads of Terms

Before detailed lease drafting, it is advisable to first agree the key terms to be included in this. Heads of Terms allow for any potential stumbling blocks to be identified (and hopefully resolved) at an early stage in the process. This is the time to look at any issues such as: financial stability, longevity, support, abilities, commitment and understanding of responsibilities. At the same time, this can also allow a group to secure funding before the lease is finalised, with flexibility.

### Basic details:

**Identity** of the landlord and tenant.

#### A description of the land boundaries.

Draw up a plan, preferably on an OS base map of a suitable scale.

**Access** provisions for pedestrians, regular or occasional vehicles, and/or for special events. Access for the landowner to inspect the site if required.

If access to the site is wholly within the leased area and for the tenant’s sole use, it might be reasonable to expect the tenant to be solely responsible for maintaining the access. If access is to be shared, or covers land outside the leased area, then maintenance costs should be shared, particularly when access is not solely pedestrian.

**Rent:** Any monies payable and when. What provisions are to be put in place to counter late or non-payment? Is there to be a review of rent over the course of the lease? If

so, how and when? Is there any rent-free period?

Rent is one of the essential elements to a lease. If an agreement allows the use of land without payment of rent, this generally wouldn’t be interpreted as a lease but as a licence. It is though possible for leases for community growing sites to stipulate a token rent of, for example, £1 per annum, payable on demand. Ultimately, the level of rent needs to be agreed upon between the parties, with some points for consideration being:

- The size of the site.
- How much is the group able to pay? Community groups vary enormously in their ability to generate and guarantee funds for rent. It may be easier to secure one-off capital funds to make a site more functional for the group than to acquire funds for ongoing running costs.
- Is there scope for rent to be non-monetary? For example, a group could be required to erect fencing, install drainage, or deliver other improvements to a site in lieu of rent, or for a reduced rent to be agreed in the first years of a longer lease if such improvements are required to bring the site up to standard for its proposed use.
- For income-generating projects, could some or all of the rent be performance or profit related, allowing it to rise over a number of years depending on the project’s success?



- Whether charges for water or any other services are included, or if an annual fee or service charge should be paid in addition to the rent?

Consideration should also be given to practical matters such as the method of rent collection, the due date, the calculation for part years, interest for rent arrears and, in longer leases, when and how might rent be reviewed?

Lastly, for public landowners, the duty of best value needs to be considered.

### Length of agreement:

There are various things to take into account when considering what length of agreement would be appropriate, for example:

- How does community growing use fit with the landowner's long-term plans for the site?
- Is there a fixed date that the landowner requires the land back by?
- How well-established is the group?
- Are any structures to be erected on the site, or any other development to take place here?
- How will activities be funded – where will funding be secured? Many funders require a lease of at least three years; others look for significantly longer.

At the same time, consideration should also be given to practical matters such as:

- What period of notice is required to end the lease?
- Are there any options to end the lease early? If so, by whom, when and how?
- Are there options to extend the lease? If so, by whom, when and how?

### Use of the lease subjects

What uses are permitted, and what provisions should be included to prevent activities from causing a nuisance? For example, is trade or business use to be prohibited? What about the disposal of surplus produce, or the use of herbicides and pesticides? And should any restrictions be imposed on the structures that can be erected on the site during the lease, or works that can be carried out, including whether the landlord's permission should be sought for any such works? And, in all cases, think about what will happen to anything erected on the site by the tenant when the lease ends.

### Condition, maintenance and safety

- What insurance arrangements are required by both parties?
- Who is responsible for security?
- Are there known hazards on site that require management, such as a pond?
- What needs to be agreed upon in terms of any maintenance provisions (with this being particularly important if there

are any buildings on the site), and the condition in which the subjects of the lease will be left at the end of it?

- Will a photographic record of the condition of the subjects of the lease be included in this? Does the landlord have right of inspection?

### Neighbours

The appearance of, and activities at, allotments and community growing sites can generate concern among neighbours. Consider the site's surroundings and decide whether to incorporate any specific provisions into any agreement reached if necessary. For example, if you have a site adjacent to a quiet residential area, it may be sensible for the hours that any noise machinery may be used to be limited. Good relations with adjoining proprietors are in the interests of both the landowner and the land user. Potential problems like vandalism or overhanging bushes may well be shared, and common ground found to tackle them. Consultation regarding shared boundaries or proposed planting near boundaries may prevent difficulties at a later stage.

### Nuisances

There should be a general requirement for the prevention of nuisance in the lease (and specific definitions of activities which constitute it) together with provisions for the tenant to manage the site responsibly and to comply with all relevant legislation. This would include, amongst other things, legislation for the control, use and storage of pesticides, and disposal of any contaminants, controlled substances,



or other waste, in addition to which a landlord may also look to incorporate rules about things like bonfires and the good management of any compost heaps.

If the site is not being worked and looked after, then it will deteriorate and may become an opportunity for fly-tipping, vandalism and unauthorised uses. Provisions should be made within the lease for the termination in this event but allow for some fallow or inactive times.

### Administrative matters

- Where should any notices to each party be served?
- Can the lease be transferred to other people?
- Are all terms in line with any funding conditions? Can terms be flexible depending on funding?
- Who is responsible for the cost of preparing the lease and (if relevant) registration?
- Is there a procedure for dispute resolution?

## Other legal requirements to be aware of when entering into a lease

### Registration

Although not a legal requirement, it is common practice to register leases in the Books of Council and Session for preservation, which effectively ensures that the original is kept safe, and formal copies of this can be obtained from the register as required. A small fee is payable for this, plus an additional charge for each copy that is required. At the time of writing, this is £10 for the registration of the deed and one copy, which goes up by increments of £12 for each additional copy that is required. Further information on this is available at the [Revenue Scotland website](#).

In addition, any lease of 20 years or more needs to be registered in the Land Register of Scotland, with it being the tenant's responsibility to do this. This should be clearly stated in the lease. Again, this is subject to payment of a fee, the amount of which depends on the level of rent charged in the lease. More information on this is available at the [Registers of Scotland website](#).

At the same time, if the landowner's title is not already registered in the land register, the lease registration will automatically trigger registration of this as well, but only the part covered by the lease. In other words, if the site forms part of a larger landholding, then the leased part will enter the land register, but the rest will not. Under these circumstances, it may be worth thinking about registering

the landowner's whole title first and then registering the lease afterwards. But, again, this is something that your solicitor can advise on.

### Land and Buildings Transaction Tax (LBTT)

LBTT replaced UK Stamp Duty Land Tax (SDLT) in Scotland on 1 April 2015, and applies to all leases and purchases. Information on LBTT, when a LBTT return is due, and current tax rates and exemptions are available from the [Revenue Scotland website](#).

It should be highlighted here that, even when no tax is due, it may be necessary to make a LBTT return. This should always be checked for every lease, and, if there is any doubt, professional advice should be sought.

### End of Agreement:

In Scotland, a lease does not end automatically on the contractual date of enquiry unless a Notice to Quit has been served in advance by either party, a provision for which should be made in the initial lease. The content of the notice depends on several factors, including the length of the lease, the type of lease, and the size of the subjects of the lease, with minimum notice periods as follows:



- **Site of less than 2 acres:**

- Lease of less than four months – 1/3 the duration of the lease (although in all cases, it is recommended that at least 28 days' notice is given).
- Lease of more than 4 months – 40 days.

- **Site of less than 2 acres:**

- Lease of less than three years – 6 months
- Lease of more than three years – 1 year but not more than two years.

Serving notice on the wrong party, at the wrong time and otherwise incorrectly

may result in the obligations of both landlord and tenant continuing under tacit relocation.

Tacit relocation is the process by which, if no Notice to Quit has been validly served by either party, the lease rolls over for an additional period of time, and both parties are bound to it for an extended period as follows:

- For leases of up to a year – the period of the lease again
- For leases of a year or more – a year.

If the agreement is a licence rather than a lease, then tacit relocation will not apply, and this will automatically end on the date specified unless the licence terms expressly

provide for automatic renewal at the end of the initial term or an extension is agreed between the parties prior to expiry.

As will be appreciated from the above, if it is intended to bring a lease to an end at the termination date, it is important to get the drafting and service of the Notice to Quit right, and it is recommended that legal advice is sought on this at an early stage.

In addition, provision should be made in any lease for this to be brought to an end early in the event that the tenant doesn't comply with any of their obligations, and consideration should be given to circumstances in which this might be appropriate.

## Lease Templates

To assist in the drafting of a lease (once all of the above has been taken into account, and the parties have agreed on what the best type of agreement for their particular circumstances is, along with appropriate Heads of Terms for this), CLAS Scotland provides a number of style lease templates, created by Scottish law firm Burness Paull. It is, though, important to note that these are indicative styles only, and it is strongly recommended that parties take independent legal advice before entering into any agreement. For anyone looking for support in this respect, we are happy to talk through your particular circumstances, point you in the direction of example agreements that might provide an appropriate starting point, and work with you to agree on the key terms for your specific agreement. For more information, email [scotland@farmgarden.org.uk](mailto:scotland@farmgarden.org.uk)

### Template leases

- [Style lease template – Allotment let](#)
- [Style lease template – General](#)
- [Style lease template – Grazing let](#)
- [Style lease template – Modern limited duration tenancy](#)
- [Style lease template – Short limited duration tenancy](#)

Many thanks to Scottish lawfirm Burness Paull for their support in creating these templates.









# Growing in the Community Scotland Land Guide



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